IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 596 of 1990

The State of Maharashtra .. Appellant

V/s

1. Arun Dhondu Manchekar

2. Sumati Dhondu Manchekar .. Respondents

(Orig. Accused)

Shri P.S.Hingorani,APP for State

Shri R.M.Nakhwa for Respondents

CORAM:D.G.DESHPANDE

AND S.R.SATHE,JJ.

DATED:23rd Jan. 2007

ORAL JUDGMENT :(Per S.R.SATHE,J.)

1. The State of Maharashtra has preferred this appeal against the judgment and order passed by the Court of learned Sessions Judge, Ratnagiri in Sessions case No.38 of 19989 whereby both the accused were acquitted of the offences punishable under Sections 498A, 323, 307 read with 34 of IPC.

2. The brief facts giving rise to this appeal are as

under :

. The complainant Pallavi,PW1 was residing with her parents at Vijaydurga, Vitthalwadi. Her marriage took place with accused no. 1 at Mumbai on 15-6-1988. After marriage for a period of about two weeks she stayed with accused no.1 at Mumbai. The accused no.2 is the mother of accused no.1. Two weeks after marriage Pallavi and accused nos.1 and 2 went to village Sagave , Taluka Rajapur which was the native place of accused no.1. After few days accused no.1 again returned to Mumbai where he was doing his job. The complainant Pallavi continued to stay at Sagave along with accused no.2. According to Pallavi, accused no.2 told her that her father did not give the ornaments as promised and as such she should bring the said ornaments from her father. It is her case that accused no.2 used to ill-treat her and beat her on that count. When complainant went to her maiden home in the month of ASHAD 1988 she informed her parents about the demand of ornaments made by accused no.2. After short stay at the maiden home complainant returned to her matrimonial home at village Sagave. On 15-9-1988 accused no.1 went to Sagave from Mumbai for Ganapati festival. It is the prosecution case that on the next day of his arrival at Sagave the accused nos.1 and 2 forcibly removed the Mangalsutra from the persons of Pallavi and they also took her saries which were presented to her in marriage.

Not only that but they also asked Pallavi to leave their house. On the next day when complainant's brother Rajendra Wadekar had gone to Sagave, to take the complainant with him, she told him about the ill-treatment and removal of Mangalsutra. Pallavi's brother tried to persuade both the accused to return Mangalsutra and saries to her but both of them did not give any heed to it. The brother then took the complainant with him at Vijaydurga. On 25-9-1988 accused no.1 and PW 2 Gopal Mayekar and some other persons went to Vijaydurga at the maiden home of Pallavi and accused no.1 returned Mangalsutra to Pallavi. Pallavi then accompanied the accused no.1 to her matrimonial home at Sagave.,

3. The accused nos.1 and 2 were again harassing Pallavi. She therefore approached PW Gopal Mayekar and informed him about the ill-treatment meted to her. The complainant therefore again left the matrimonial home and went to her maiden home. She stayed there for a period of about one month and then again returned to her matrimonial home. However prior to that on 3-11-1988 she and her parents reported about the ill-treatment to Sagave Police Out Post. The Police Constable More who was on duty accompanied the complainant and her parents to village Sagave and then accused were given understanding and told that they should not ill-treat Pallavi in future. Pallavi therefore started to reside

at village Sagave.

4. On 16-11-1988 Pallavi and accused no.1 had been to their agricultural field. However,some dispute arose between them and accused no. 1 gave a slap to Pallavi. She therefore returned to her matrimonial home and attended the other house hold work. In the afternoon when complainant Pallavi was sleeping in her house at about 2-00 p.m. the accused no.1 awoke her and gave a slap and dragged her to the kitchen room. Accused no.2 then caught hold of complainant and accused no.1 picked up small kerosene lamp and sprinkle kerosene out of it on the person of Pallavi. Thereafter accused no.1 lighted a match stick and threw it towards the complainant. However, by that time Pallavi got herself released from the clutches of accused no.2. She immediately went running to the neighbours - Gopal Mayekar and Shankar Paderkar and told them about the incident. House of Gopal Rane (PW 4), the husband of her paternal aunt finding that clothes of Pallavi were smelling of kerosene and hearing about the incident Pallavi was taken to Zilla Parishad dispensary and then one Vishwas Rane went to Vijaydurga to inform about the incident to the parents of Pallavi. Then the parents of Pallavi and some other persons came to village Sagave at the house of Gokul Rane at mid night. Then again complainant and other persons went to Sagave Out post. Then Police Constable More took them to Rajapur Police

Station where Pallavi lodged a complaint against both the accused about the incident.

5. On the basis of the said complaint Police registered Crime No.128 of 1988 for the offence punishable under Section 498A and 307 of IPC read with 34 of IPC.

6. The Police first visited the place of offence and drew panchanama (Exh.14). They also attached saree and blouse of the complainant and drew panchanama (Exh.15). Police then recorded statements of various witnesses and arrested the accused on 18-11-1988. The attached clothes were then sent to C.A. After completion of investigation, Police submitted charge sheet against both the accused in the Court of J.M.F.C., Rajapur for the offence punishable under Section 323, 307, 498A read with 34 of IPC.

7. Finding that the accused were charge sheeted for the offence punishable under Section 307 which was exclusively triable by the court of Sessions, the learned J.M.F.C., Rajapur committed the case to the Sessions Court, Ratnagiri.

8. The learned Sessions Judge, Ratnagiri framed charge Exh.2 against the accused for the offences mentioned above. The charge was read over and explained to the accused. Both the accused pleaded not guilty and

claimed to be tried. Their defence was of total denial.

9. In order to bring home the guilt of the accused the prosecution examined as many as 8 witnesses consisting of :-

i. PW 1 Pallavi Arun Manchekar, Exh.8
ii. PW 2 Gopal R. Mayekar, Exh.11,
iii.PW 3 Shankar N. Paderkar, Exh.12,
iv. PW 4 pancha witness Gokul R. Rane, Exh.13,
v. PW 5 Vishwas G. Rane,Exh.16,
vi. PW 6 Mahesh E. Wadekar,father of Pallavi, Exh.18,
vii.PW 7 Investigating officer, Vijay L. Pawar,Exh.19 &
viii PW 8 Vyankatesh M. Mudholkar,Exh.25.

10. The prosecution also produced the complaint Exh.9, panchanama of place of offence Exh.14, panchanama of clothes of complainant Exh.5, Medical certificate of the complainant Exh.26 and C.A. report Exh.23.

11. After completing the evidence adduced by the prosecution the learned trial Judge came to the conclusion that the evidence of the complainant Pallavi and her father Mahesh E. Wadekar as well as Vishwas G. Rane is not trust-worthy. According to him, the prosecution failed to prove beyond reasonable doubt that Pallavi was subjected to cruelty as alleged and accused made an attempt to commit her murder. Naturally, the

learned trial Judge acquitted both the accused of all the offences with which they were charged.

12. The above order of the acquittal is challenged by the State in the present appeal. In this appeal before us, Shri P.S.Hingorani, learned APP has urged three points. Firstly, he submitted that the learned trial Judge has not properly appreciated the evidence on record. Secondly, he canvassed before us that the learned trial Judge ought to have given importance to medical evidence which indicated that the complainant Pallavi was assaulted. So, according to him the learned trial Judge ought to have held that complainant was assaulted by the accused. Lastly, he submitted that there was sufficient evidence to show that accused poured kerosene on the person of complainant Pallavi and her clothes were also smelling kerosene. He, therefore, submitted that appeal be allowed and the accused be acquitted for charges levelled against them.

13. As against this, Shri Nakhwa, learned advocate for the accused supported the judgment and order passed by the learned trial Judge. He also submitted that the view taken by the learned trial Judge is reasonable and possible view and as such no interference in the said order is required in this appeal against acquittal. He, therefore, submitted that the appeal be dismissed.

14. It is not in dispute that marriage of complainant with accused no.1 took place on 15-6-1988 at Mumbai and after marriage they stayed together at Mumbai for a period of about 2 weeks. It is also an admitted fact that after two weeks complainant Pallavi started residing at the native place of accused no.1 i.e. at village Sagave, Taluka Rajapur along with accused no.2. It is an admitted fact that total period for which complainant Pallavi stayed at Sagave was only of about 20 days. However, according to her during that period the accused nos.1 and 2 ill-treated and harassed her.

15. In order to bring the alleged ill-tretment, the prosecution is mainly relying on the evidence of complainant Pallavi Exh.8 and 4 others witnesses viz. PW 2 Gopal R. Mayekar, Exh.11, PW 3 Shankar N. Paderkar, Exh.12, Vishwas R. Rane,Exh.16 and PW 6 complainant's father Mahesh E. Wadekar Exh.18. Pallavi has stated in her deposition that accused no.2 told her that her father did not give the ornaments as promised at the time of marriage. According to her she also told this fact to her parents and she tried to take information as to which ornaments were to be given and what was the promise given by her father when her marriage was settled. However, the complainant herself has admitted that she did not receive any information in that behalf. What is more to be noted is that Pallavi has not at all stated that accused no.2 was demanding

particular ornaments. Thus, we find that evidence of Pallavi in this behalf is very vague and scanty. Admittedly, there is no evidence on record to show that at the time of marriage any Yadi was prepared whereby it was agreed that complainant's father should give particular ornaments to the accused. Nor there is any evidence to show that talks with regard to marriage had taken place in presence of certain persons and at that time y it was decided to give ornaments. Thus, we find that the allegations made by the complainant Pallavi are not at all substantiated or corroborated by any evidence. What is more to be noted is that though Pallavi has stated that accused has ill-trated her and they used to beat her, she has not at all given any details about the alleged ill-treatment or beating. She has not stated as to when, how and where she was beaten. Though she made a statement that she had made a grievance about the said beating and ill-treatment to the adjoining neighbour Gopal Mayekar, we find that the said witness has turned hostile and not at all supported the case of the complainant. Similarly, the other prosecution witness viz. Shankar Padelkar has also not supported the prosecution and as such he has been declared hostile. Thus, we find that case of the complainant Pallavi that she had reported to the neighbours about the alleged ill-treatment is not at all proved . There is absolutely nothing on record to show that these two witnesses are having any grudge or

grievance against the complainant and they are under obligations of the accused and as such they are deposing against the complainant. We, therefore, find that the above mentioned two independent witnesses have not supported the case of ill-treatment tried to be made out by the complainant Pallavi. So, the evidence of Pallavi appears to be quite doubtful and unreliable.

16. It is the case of Pallavi Exh.8 and her father Mahesh Wadekar Exh.18 that they had reported about the ill-treatment to Sagave Out Post and at that time even Police Constable More had accompanied them to the house of the accused and he had given understanding to the accused persons and told them to give proper treatment to Pallavi. However, curiously enough, we find that prosecution has not at all examined the said Police Constable More. He was in fact a material witness. No satisfactory explanation is given by the prosecution for non examination of the said material witness. Naturally, the entire prosecution version appears to be doubtful.

17. The prosecution witness no.5 Vishwas Rane has stated that he came to know about the ill-treatment meted out the complainant Pallavi when she had come to his house. However, we find that his evidence is also quite vague and scanty. He has no where specifically stated as to what sort of ill-treatment or harassment

was caused to Pallavi. When it was caused and how it was caused. Merely saying that Pallavi was being ill-treated is certainly not sufficient so as to find out whether the alleged acts were amounting to cruelty as contemplated under Section 498A of IPC. Besides this, it must also be noted that admittedly he is in relation of Pallavi and as such he is an interested witnesses. So, it is very clear that the evidence of Vishwas Rane is of no help to prosecution to prove the alleged offence under Section 498A of IPC.

18. So far as the incident with regard to pouring of kerosene is concerned, we find that Pallavi has stated that when she was sleeping in the house the accused no.2 took a small kerosene lamp and threw kerosene out of it on her person. She has also stated that at that time the accused no.2 had caught hold her and accused no.1 lighted a match stick and threw it towards her but she got herself released. According to her she was wearing glass bangles when she made stiff resistance and ultimately got herself released from the clutches of accused no.2. However we find that even then at that time the bangles were not broken. Besides this she had also not received any injury to her hand. Though it is stated that at the relevant time the accused no.1 threw kerosene on her person from some distance, we find that when panchanama of place of offence was drawn there were no signs of throwing kerosene at the said place. Though

witness Vishwas Rane and Mahesh Wadekar have stated that at the relevant time the clothes - saree and blouse of Pallavi were smelling kerosene we find that when said clothes were sent to C.A., C.A. has reported (exh.23) that there were no residue of kerosene. So, complainant's version in this behalf is also not proved by other evidence on record.

19. There is another very important circumstance which in fact creates grave doubt about the complainant's version. It is her case that alleged incident of throwing kerosene took place on 16-11-1988 in the afternoon at about 2-30 p.m. According to the complainant she immediately thereafter went to adjoining neighbours as well as to the house of Gokul Rane and then he deputed his son Vishwas to go to Vijaydurg for informing the parents of complainant. It is pertinent to note that there was no reason for the complainant and Gokul Rane to wait till the arrival of parents of Pallavi. We find that instead of lodging complaint immediately to Sagave Out Post the complainant waited till late at night. It is only after the arrival of parents and some other persons it is alleged that complainant went to Sagave Out Post and then again Constable More told them to go to Rajapur Police Station to file the complaint. It is wroth to note that Constable More is not examined. So, there is nothing on record to indicate that Pallavi had in fact gone to

Sagave Out Post at a particular time. Besides this, we find that even according to the complainant she went to Rajapur Police Station on 17-11-1988 at 3-00 p.m. and then lodged the complaint. So, there is inordinate delay in lodging the complaint. The said delay is not at all satisfactorily explained by the prosecution. Under the circumstances delay in lodging the FIR also creates grave doubt about the prosecution version and accused is certainly entitled to get benefit of the said reasonable doubt. Merely because Dr. Mudholkar Exh.25 has stated that on 16-11-1988 at about 4-30 p.m. he examined Pallavi at Zilla Parishad dispensary and he

noticed 3 lacerated wounds below left ear 1/4" in length and at that time he had noticed smell of kerosene, we cannot jump to the conclusion that version of Pallavi is true and correct. It is an admitted fact that on 16-11-1988 Pallavi had not gone to the said dispensary with any Police Yadi nor there is any convincing and reliable evidence to show that injury with regard to examination of Pallavi was made in MLC register by Dr.Mudholkar at the relevant time. MLC register is also not produced by the prosecution. The certificate issued by Dr.Mudholkar also does not bear any outward number. So, it creates some doubt. Besides this there is nothing on record to indicate that doctor had asked any history to Pallavi. Normally there should have been

endorsement to that behalf. So, considering all these aspects this one medical certificate issued by Dr.Mudholkar is certainly not sufficient to prove the charge levelled against the accused. Thus, we find that the learned trial Judge has considered the entire evidence on record in its proper perspective and rightly held that the prosecution has failed to prove the charge levelled against the accused. The finding recorded by the learned trial Judge is not shown to be unreasonable, improbable, perverse or illegal. Hence there is no necessity to interfere with the said finding. In this view of the matter we pass the following order.

ORDER

1. The appeal is dismissed. Bail bonds of the accused stand cancelled.

(D.G.DESHPANDE,J.)

(S.R.SATHE,J.)